

NTSB Order No. EA-4552

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 23rd day of May, 1997

Respondent.

Docket SE-14234

6763A

look first to Board precedent and only afterwards to FAA written sanction guidance. If that were our intent, the FAA would be rightly concerned. It, however, is not.¹ We merely listed two principles, generally applicable -- principles we have applied, *as relevant in particular cases*, since the FAA Civil Penalty Administrative Assessment Act of 1992 was enacted. We did so solely in the context of reminding our law judges that their discretion had limits.

In any case, we decline the FAA's request in this petition that we reverse the hierarchy they have perceived and consider first the FAA's sanction guidance. We hope we have now explained that we intended no hierarchy. Further, we agree with the general principle that, if deference issues are joined, any analysis of case precedent takes place in the deference context. We see no need to go further, and see (perhaps unintended) difficulty with the FAA's approach.

In some, if not most, cases, issues of deference do not ever arise and are not discussed because we agree with the proposed sanction. (We have in prior decisions noted the obvious conclusion that we need only address deference issues when we disagree with the FAA regarding sanction.) Here, there was no such disagreement and, therefore, no reason to address CP Act issues. The FAA proposal fails to consider this circumstance or others where FAA counsel fails to mention FAA sanction guidance, or where no such guidance exists. To the extent the FAA's proposal here can be read to require us, at any stage of our proceedings, to locate and consider any applicable written sanction guidance by the Administrator where that issue has not even been pleaded by the FAA, we decline to do so, as we noted in our opinion (at 5). See Administrator v. Rolund, NTSB Order EA-3991 (1993), aff'd Hinson v. NTSB and Richard A. Rolund, 94-1428 (D.C. Cir. June 30, 1995).

ACCORDINGLY, IT IS ORDERED THAT:

The Administrator's petition is denied.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.

¹ The misunderstanding may have been caused by the juxtapositioning of various discussions in the decision. Following the quoted statement of principles, we proceeded to discuss case law, and closed with a reference to a deference issue.

